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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/427,388	10/26/1999	KEVIN LLOYD GRIMES	RCA-89.086	3105

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JOSEPH J. LAKS, VICE PRESIDENT
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EXAMINER

HARPER, KEVIN C

ART UNIT	PAPER NUMBER
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2616

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/427,388

Applicant(s)

GRIMES ET AL.

Examiner

Kevin Harper

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

Applicant's arguments filed December 26, 2006 have been fully considered but they are not persuasive.

1. Applicant argued that Cuccia does not disclose a protocol decoder that is adaptive.

However, the protocol decoder in Cuccia (fig. 2, item 204) adaptively selects a desired program stream. Applicant has narrowly defined "adaptive" to mean a device that processes more than one type of protocol; however, Examiner has given the term "adaptive" a broad and reasonable interpretation.

2. Applicant argued that Cuccia in view of Eyer and Applicant's admitted prior art does not disclose the claimed invention. However, Cuccia in view of Eyer and Applicant's admitted prior art provide a teaching of selecting a transport stream among several transport streams, each having a different transport format.

3. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Cuccia in view of Eyer provides teaching and motivation for selecting a packet source from among several packet sources having different transmission paths (e.g., cable, satellite, terrestrial broadcasts) and Applicant's admitted prior art discloses that a transmission stream from different packet sources uses a different transport format (e.g., DSS format for DirecTV, ATSC for HDTV terrestrial

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broadcasts, etc.), where the motivation for the combination is to provide a proprietary transport format as desired by the different packet sources.

4. Applicant argued that the combination does not disclose providing first, second and third control programs. However, the combination of Cuccia and Eyer provides for control programs that process packets from a first stream, process packets from a second stream, and switch the processing between the decoding the first packets to decoding the second packets (Eyer, col. 9, lines 33-42).

5. In response to applicant's argument that Yu is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Yu provides a means for changing operating modes in an electronic device which is pertinent to the change of data modes as similarly described in figs. 4-7 of the application.

6. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Yu provides motivation for switching the operation of an electronic device as appropriate (col. 4, lines 10-17; note: switching the mode of operation from HVS to XCP for processing user data when desired by the user).

7. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cuccia (US 6,157,673) in view of Eyer et al. (US 5,982,411) and applicant's admitted prior art.

8. Regarding claims 1, 3 and 10-12, Cuccia discloses an adaptive transport decoder (figs. 1 or 2) comprising a source of a first stream of packets (TSx; fig. 3) each including a payload and having a first transport protocol, a source of a second stream of packets, a protocol decoder (fig. 1, item 102; fig. 2, item 202) coupled to the sources for extracting payloads from the packets, and a selector (fig. 1, item 104; fig. 2, item 204) coupled to the packet sources and an output terminal coupled to the protocol decoder for selectively coupling one of the first stream of sources to the decoder (fig. 1; note: only one desired stream is sent to the decoder). Further regarding claim 12, data from the packet header (fig. 3, item PH) is stored in a register for later use by the decoder (col. 4, line 56 through col. 5, line 2).

9. However, Cuccia does not disclose that the packets have different first and second transport paths. Eyer discloses a source of a first stream of packets (item 240) having a first path (col. 7, line 61 through col. 8, line 6; col. 10, lines 59-63) and a source of a second stream of packets (item 250) having a second path (col. 8, lines 8-13; col. 8, lines 13-17). A protocol decoder (item 265) is coupled to the first and second packet stream sources and extracts the respective payloads from the packets (col. 7, lines 63-65; col. 8, lines 5-7) from a selected one of the first and second packet sources (col. 9, lines 33-36 and 43-56). Further regarding claim 3, the protocol decoder is a processor (col. 7, lines 63-65) responsive to control programs for extracting payloads from respective transport streams. The protocol decoder inherently has a third control program for switching between the first control program and the second control program (col. 9, lines 33-42). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to receive and decode transport streams of different transport paths in the inventions disclosed in Cuccia in order to conveniently view television programs transmitted through different networks (Eyer, col. 2, lines 23-38 and 45-50).

10. Further, Cuccia in view of Eyer does not specifically disclose that the packets of different transport paths have different transport protocols. Although, Eyer discloses digital satellite broadcasts (col. 2, lines 23-39; note: DBS) and digital terrestrial broadcasts (col. 10, lines 60-62; note: ATSC). Further, Applicant's admitted prior art discloses that packets having different transport paths have different transport protocols (pages 1-2; note: ATSC for terrestrial broadcasts has a different format than DSS for satellite broadcasts). Therefore, it would be obvious to one skilled in the art at the time the invention was made to have different transport protocols in the invention of Cuccia in view of Eyer in order to provide data as related to the communication

medium or preference, as is known in the art (specification, page 1, note: prior-art proprietary transport formats).

Claims 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cuccia in view of Eyer et al. and applicant's admitted prior art, as applied to claim 3 above, and further in view of Yu (US 5,410,709).

11. Regarding claims 4-9, Cuccia in view of Eyer does not disclose that the first and second control programs comprise a packet handler, several interrupt drivers and an interrupt vector containing a pointer to an interrupt driver, and reallocating a buffer. Yu discloses a controlling system (Figure 1) that has interrupt vectors for pointing to stored control information (col. 4, line 67 through col. 5, line 7) and user information (Figure 2b). The control programs are chosen using a third control program (col. 5, lines 10-15) and a buffer is reallocated (Figure 3a, step MLX DR., "index into interrupt"). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to have a interrupt drivers and interrupt vectors for pointing to memory locations and reallocate memory locations to a buffer in the invention of Cuccia in view of Eyer in order to appropriately invoke control information (col. 3, lines 56-64).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the

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date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Harper whose telephone number is 571-272-3166. The examiner can normally be reached weekdays from 11:00 AM to 7:00 PM ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn Feild, can be reached at 571-272-2092. The centralized fax number for the Patent Office is 571-273-8300. For non-official communications, the examiner's personal fax number is 571-273-3166 and the examiner's e-mail address is kevin.harper@uspto.gov.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications associated with a customer number is available through Private PAIR only. For more information about the PAIR system, see portal.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin C. Harper

March 30, 2007